

Contract No.:

Contract No.: _____
TRACS No.: _____
Project No.: _____

A.G. Contract No: KR94-1408ALS

CONSULTANT CONTRACT

This CONTRACT is made and entered into on _____, 20____ by and between the State of Arizona, Arizona Department of Transportation, Intermodal Transportation Division, acting by and through the Director, hereinafter called STATE, and

(Consultants Name and Address Inserted Here)

hereinafter called the CONSULTANT.

The Description and Location of the CONTRACT and related project(s) are as follows:

Description:

(Contract Description Inserted Here)

Location:

(Contract Location Inserted Here)

RECITALS

1. The STATE desires that location and design plans be prepared for the above location. The trained personnel needed for the CONTRACT and related project(s) are not currently available within its own organization.
2. The CONSULTANT firm with its principals and employees is considered to be qualified and otherwise capable of performing the work required by this contract in the time allotted.
3. Therefore, pursuant to Arizona Revised Statutes, Section 28-1803(5) it is deemed to be in the public interest to enter into this contract.

AGREEMENT

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Therefore, in consideration of these premises and of the mutual clauses and agreements herein contained, and the faithful performance thereof, the CONSULTANT and the STATE contract and agree:

2.01 SCOPE OF WORK

The CONSULTANT shall perform engineering services for the satisfactory completion of the CONTRACT and related project(s) as detailed and described in the following Scope of Work dated _____, **20**_____ which is considered to be a part of this CONTRACT.

(Scope of Work Inserted Here)

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3.01 CONTRACT SCHEDULE AND COMPLETION DATE

Work on the CONTRACT and related project(s) is scheduled to commence on _____. Work is to be completed within _____ calendar days from notice to proceed for an estimated completion date of _____, 20____. The STATE assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the CONTRACT completion date. Extensions of time allowed for completing the CONTRACT may be granted under appropriate circumstances.

3.02 CONSULTANTS COMPENSATION - COSTS PLUS FIXED FEE - MULTIPLE PHASES

1. The Costs Plus Fixed fee method of compensation for CONSULTANT'S services shall be used.

- a. PHASE I - DESIGN

CONSULTANT'S total compensation for work on Phase I of the CONTRACT shall not exceed the sum of \$ _____ plus approved adjustments, and shall consist of three parts:

- (1) The CONSULTANT'S total allowable costs incurred as hereinbelow defined which are estimated to be \$ _____. Such costs shall not be exceeded without prior written approval of the STATE.
- (2) A fixed fee portion of the CONSULTANT'S compensation for rendering of the professional services herein contemplated shall be \$ _____.
- (3) An incentive fee portion of \$ _____, (optional at the discretion of the STATE) shall be paid the CONSULTANT for satisfactory completion of the engineering portion of the CONTRACT within _____ calendar days, exclusive of post design services. The incentive fee portion shall not exceed 1 (one) percent of Direct Labor and Overhead as set forth in the cost proposal. Changes to the incentive fee shall be made by Contract Modification.

- b. PHASE II - DESIGN SERVICES - SCOPE ITEM#

CONSULTANT's total compensation for work on Phase II shall be at the unit rates set forth in the final cost proposal, and shall not exceed the sum of \$ _____, plus approved adjustments. Notice of said determination shall be made either by Administrative Letter or Contract Modification.

- c. PHASE III - POST DESIGN SERVICES

CONSULTANT'S compensation for work on Phase III, Post Design Services, will begin at construction bid date and will be at specific hourly rates (to include direct labor, overhead and fixed fee) as set forth in the CONTRACT, plus direct expenses approved by the STATE. Rates are subject to negotiation prior to

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execution of this phase. Identification of personnel within each classification may be required by the ADOT Project Manager. Authorization for post-design services will be executed by Contract Modification.

d. **TOTAL CONTRACT COMPENSATION**

CONSULTANT'S total compensation for work on the CONTRACT shall not exceed the sum of \$ _____ plus approved adjustments.

2. "Costs" as used in this context shall be construed to mean the CONSULTANT'S actual, reasonable costs, subject to any limitation set forth in this CONTRACT, attributable and properly applicable to the conduct of the CONSULTANT'S business in the performance of this CONTRACT in accordance with procedures as set forth in Chapter 1 of the Federal Acquisitions Regulations System, 48 CFR 31.2, and any other mutually agreed upon policies or regulations, as appropriate. Costs for each subcategory (line item) shall not exceed the allowable rates as set forth on the DERIVATION OF COST PROPOSAL located in the SCOPE OF WORK section, Appendix _____ of the CONTRACT, or are approved by contract modification, or by Administrative Determination Letter, as applicable. Such costs shall be allocated to the following categories and respective subcategories and may include, but are not necessarily limited to:

a. **Direct Labor**

Gross Salaries and/or wages paid to employees for work on the CONTRACT and related project(s), for time actually spent by CONSULTANT'S employees in direct productive efforts. Regarding CONSULTANT'S employees who charge their time to projects, their non-project pay, such as holiday pay, vacation pay, or any other form of indirect pay which is included in the employees' gross wages, will not be charged as direct labor to the CONTRACT or to related project(s). Non-project pay is to be included in 3.02 2.b.(2). Also payments to individuals other than the CONSULTANT'S employees are specifically excluded as direct labor costs. Payment of premium overtime (i.e., time and a-half or double time, over and above the normal 40 hour work week) must have the prior written approval of the STATE.

b. **Indirect Costs (Overhead)**

- (1) Applicable to straight time portion of Direct Labor only, as defined in 3.02 2. a..
- (2) Indirect labor which includes non-project pay to CONSULTANT'S employees who normally charge their time to projects, salaries and wages paid to support staff such as secretarial, clerical and custodial, plus managerial employees whose time is not considered chargeable project time to this CONTRACT and related project(s) or any other specific project of the CONSULTANT.
- (3) Payroll costs-taxes and fringe benefits such as matching funds or employer's contributions paid for employee's social security,

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unemployment compensation, worker's compensation insurance, medical/dental life or disability insurance, pension plans, dependent care or medical expense reimbursement accounts, or similar employee benefits.

- (4) Normal operating costs, including but not limited to, reasonable office rental or depreciation expense, repairs, maintenance, parking, janitorial, supplies, telephone and utilities for CONSULTANT'S facilities unless specifically waived by the STATE.
- (5) Payment to the CONSULTANT for Indirect Costs shall be made pursuant to Federal Acquisition Regulation, 48 CFR Chapter 1 Part 31.2, and ADOT Contract Cost Allowability Guidelines and Policies as of August 28, 1998. During the period of the CONTRACT, partial payments will include payments for indirect costs at a provisional rate established by the pre-negotiation review by the audit and analysis office of the department. The Negotiated Provisional overhead rate of _____% will be set until receipt of the Pre-Negotiation Audit Review. A contract modification will be executed to establish the Provisional overhead rate. The Overhead rate, Direct Expenses and Fee are subject to change pending Pre-Negotiation Audit Review. A one time redetermination adjustment in the total amount paid or to be paid on all payment reports shall be made to reflect the established overhead rate and any resulting additional payments, refunds, or credits shall be made promptly. The contract Notice to Proceed date will be the effective date for all redetermination of costs.
- (6) The CONSULTANT is responsible for identifying its costs as allowable and unallowable pursuant to FARS 48 CFR Chapter 1 Part 31.2 and any other mutually agreed upon policies or regulations. Within five months after the CONSULTANT'S fiscal year-end, the CONSULTANT will have properly accounted for its allowable Indirect Costs (Overhead) as set forth herein.
 - (a) If the actual Overhead rate is lower than the provisional rate used, the CONSULTANT must determine the difference on the progress billings previously paid by the STATE, and remit to the STATE the amount overpaid by the STATE no later than the end of the sixth month following its fiscal year-end. If the CONSULTANT fails to comply with this condition, a penalty of 20% of the over-paid amount will be assessed. If by the end of the sixth month the CONSULTANT has not remitted either the over-paid amount or the penalty thereon, interest of 1% per month will be charged on the unpaid amount until all amounts owing have been paid. Interest will cease to accrue should the combined amount of penalties and interest accumulate to a maximum of 33% of the amount over-paid by the STATE.

- (b) If the actual Overhead rate is higher than the provisional rate used, the CONSULTANT may determine the amount of additional Overhead due and request payment of same. The payment request must be properly documented and certified by the Chief Financial Officer of the CONSULTANT. The maximum Overhead allowed, will be the CONSULTANT'S actual percentage for the fiscal year as determined by 3.02 2.b.(6) or (B).
 - (c) If the CONTRACT period exceeds one fiscal year of the CONSULTANT, the provisional rate should be modified to more correctly reflect the actual experience or anticipated experience of the CONSULTANT or any of its Subconsultants, if applicable. Either the STATE or the CONSULTANT may initiate the request to modify the provisional rate to prevent substantial overpayment or underpayment.
- (7) Upon completion of the CONTRACT, a final determination of Indirect Costs (Overhead) may be made based on an audit of financial records pursuant to 3.02 2.e.
- c. **Other Direct Costs**

Direct expenses for travel, subsistence, per diem, or other mutually agreed upon expenses of a non routine nature which can be identified directly to the CONTRACT and related project(s). Out of State travel must have prior approval of the STATE.

Facilities Capital Cost of Money will be allowed when properly supported. The provisional rate for this contract is ____%.
- d. **Outside Services**

Salaries and wages paid to individuals, other than the CONSULTANT'S regular employees, such as payments to other consultants, subconsultants, sub-contractors or vendors for engineering and professional services directly attributable to the CONTRACT.
- e. **Audit of CONSULTANT'S Business Operations and Financial Records**
 - (1) All costs billed to the STATE are subject to audit. The CONSULTANT, and by way of subcontract, all subcontractors or Subconsultants, shall allow the designated STATE auditors to perform an audit as deemed appropriate. Such an audit will take into consideration consistent application of Generally Accepted Accounting Principles and Contract Cost Principles and Procedures as set forth in Chapter 1 of the Federal Acquisition Regulations System, 48 CFR Part 31.2 and any other mutually agreed upon policies or regulations.
 - (2) The CONSULTANT shall insert in each of its subcontracts the above requirement and also a clause requiring its Subconsultants to include the above requirement in any lower-tier subcontracts.

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3. The STATE shall pay the CONSULTANT in installments based upon Progress and Final Payment Reports and Work Hour Reports submitted by the Consultant. A summary of costs billed by category or subcategory, as required by ADOT, is to be included with the invoice. The Payment Reports shall show allowable costs incurred to date under the CONTRACT and the pro-rata portion of the fixed fee earned, with the CONTRACT billed amount subject to the following limitations:
 - a. Prior to approval of the Stage II Design Submittal, the billed amount shall not exceed _____% of the total contract amount.
 - b. Prior to approval of the Stage III Design Submittal, the billed amount shall not exceed _____% of the total contract amount.
 - c. Prior to the approval of Final Design Submittal, the billed amount shall not exceed _____% of the total contract amount.
 - d. The STATE, at its discretion and with the recommendation of ADOT's Project Manager, may, by written notification, waive the above limitations. Approval authority shall be the same as for interim payments.
4. Costs are to be identified separately for each project number. Costs for each category must not exceed the amounts budgeted for those specific categories during the contract time frame without prior written approval of the STATE.
5. The CONSULTANT is required to submit a Monthly Progress Report in a format furnished by the STATE showing the status of the work and the degree of completion thereof.
6. The STATE shall not withhold retention on progress payments. However, if satisfactory progress has not been made, the STATE may first retain a maximum of 10% of the current and subsequent billings, or secondly, the STATE may refuse to make full progress payment(s) of such sums which are considered necessary.
7. When all work is delivered, accepted and approved as complete by the STATE, the ADOT Office of Audit and Analysis may prepare a report showing allowable costs incurred. Preparation of this report may require an audit examination of the CONSULTANT'S records. This may also include an examination of subconsultants or subcontractors records.

During performance of progress or final audits, the allowability of direct costs will be contingent upon the CONSULTANT'S ability to demonstrate that these costs were excluded from the overhead cost pool.
8. Final payment shall be made as soon as possible after 60 days from the date of acceptance of the audit findings, if applicable, by the STATE and the CONSULTANT.
9. In the event the STATE requires substantial changes in the scope, character or complexity of the work on the CONTRACT, the total compensation as well the fixed fee portion may be re-evaluated and adjusted to a greater or lesser amount by mutual agreement between the CONSULTANT and the STATE.

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10. In the event this CONTRACT is terminated by the STATE as herein provided, the CONSULTANT may be paid all the allowable costs incurred, including mobilization and demobilization expense, plus that portion of the fixed fee earned to date of termination as determined by the STATE. Mobilization and demobilization expenses shall include only reasonable costs of marshalling personnel (and equipment if specifically provided for in the contract) for performing this work and of terminating employment of such personnel. No costs will be allowable in connection with termination of employment if incurred later than fifteen (15) days after the date of termination. Costs will be determined as provided in the Federal Acquisition Regulations and may be verified by an audit.

4.01 CONSULTANT AND SUBCONSULTANT PAYMENT

The CONSULTANT shall submit invoices on a regularly monthly basis in accordance with a timetable agreed to in contract negotiations. Invoices should be sent directly to ADOT Project Manager or Project Monitor.

The CONSULTANT will submit invoices for work performed by their Sub-consultants even though the prime CONSULTANT may not have performed working during the preceding month.

On or before the seventh day after the STATE makes a progress payment to the CONSULTANT, the CONSULTANT shall pay the Sub-consultants for the work performed to the extent of each Sub-consultant's contractual interest in the progress payment.

4.02 CONTRACT MODIFICATIONS

1. Contract modifications, defining and limiting the terms of the contract and compensation, must be approved by the STATE, and shall be submitted in the form and format provided by the STATE. The CONSULTANT will be compensated only with prior written authorization by the STATE. Any administrative/technical costs associated with the preparation of said modifications are solely the responsibility of the CONSULTANT.

- a. Supplemental Agreements

Significant changes in the scope, character, or complexity of the work may be negotiated if it is mutually agreed that such changes are desirable and necessary. Contract changes defining and limiting the work and compensation must be authorized by the STATE. Such supplemental agreement(s) shall be made in writing, and it is expressly understood and agreed that no claim for extra work performed or materials furnished shall be made by the CONSULTANT until authorization to proceed is granted, in writing, by the STATE.

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b. Changes Orders

The STATE may at any time, by written order, and without notice to sureties, if any, make (or direct) changes within the general scope of this CONTRACT in the services to be performed.

4.03 DELAYS AND EXTENSIONS

The CONSULTANT agrees that no charges or claims for damages shall be made against the STATE for any delays or hindrances during the progress of this CONTRACT. Such delays or hindrances, if any, will be covered by an extension of time for such reasonable period as mutually agreed upon between the parties. It is agreed and understood, however, that permission to proceed with the CONTRACT after the established completion date, shall not be construed as a waiver by the STATE of any of its rights herein.

4.04 LATE SUBMITTAL OF INVOICE

Unless waived by the STATE, in writing, all invoices for work performed under this CONTRACT shall be submitted within 60 days from date of acceptance of the completed portion of the work performed.

4.05 PERFORMANCE EVALUATIONS

The CONSULTANT'S performance will be evaluated periodically in accordance with the schedule set forth in Appendix _____ of this CONTRACT.

4.06 GENERAL COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all Federal and State laws, and local ordinances and regulations.

4.07 LITIGATION

In the event of litigation between the CONSULTANT and the STATE involving this CONTRACT, the laws and decisions of the State of Arizona shall apply and any such litigation shall be commenced and prosecuted in the appropriate court of competent jurisdiction of the Federal or State Court System within the geographical boundaries of the State of Arizona.

4.08 DISPUTE ESCALATION (Administrative Review)

A written dispute escalation process will be utilized to resolve questions of fact during the course of this CONTRACT. The final determination will be made by the STATE.

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4.09 ARBITRATION

The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this agreement where the sole relief sought is monetary damages of \$100,000, or less, exclusive of interest and costs.

4.10 TERMINATION, POSTPONEMENT OR ABANDONMENT

1. The right is reserved by the STATE to terminate, indefinitely postpone work, or abandon the CONTRACT. The STATE may terminate this CONTRACT in any one of the following circumstances:
 - a. Failure of the CONSULTANT to perform the services as detailed herein and in any modifications to this CONTRACT.
 - b. Failure of the CONSULTANT to complete this CONTRACT within the time specified herein and in any modifications to this CONTRACT.
 - c. Failure of the CONSULTANT to comply with any of the terms of this CONTRACT.
 - d. When, for any reason, the STATE shall determine that such termination is in its best interest.
2. If the STATE contemplates termination under the provisions of paragraphs 1.a., 1.b., or 1.c. above, the CONSULTANT shall have five (5) days in which to cure such failure. In the event the CONSULTANT does not cure such failure, the STATE may terminate the CONTRACT without further consideration.
3. If, after Notice of Termination of this CONTRACT under the provisions of 1.a., 1.b. or 1.c. of this clause, it is determined that the CONSULTANT was not in violation or default, the Notice of Termination shall be deemed to have been issued under the terms of 1.d. of this clause.
4. Termination shall be effected by delivery to the CONSULTANT of a Notice of Termination specifying whether termination is for default of the CONSULTANT or for the convenience of the STATE, the extent to which performance of the CONTRACT is terminated, and the date upon which such termination becomes effective.
5. In the event of termination, the STATE shall be liable to the CONSULTANT only to the extent and as provided in SECTION 3.02 (CONSULTANTS'S COMPENSATION) of this CONTRACT.
6. In the event this CONTRACT is terminated, the STATE shall have the option of completing the CONTRACT, or entering into an agreement with another party for the completion of this CONTRACT according to the provisions and agreements herein.
7. If the STATE exercises this option, all costs and charges incurred by the STATE, together with the cost of completing the work under CONTRACT, will be deducted from any monies due or which may become due the CONSULTANT.

4.11 CANCELLATION OF STATE CONTRACTS

In accordance with Arizona Revised Statutes 38-511, the STATE may cancel any CONTRACT, without penalty or further obligation, made after the effective date of this section by the STATE or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the CONTRACT on behalf of the STATE or any of its departments or agencies is, at any time while the CONTRACT or any extension of the CONTRACT is in effect, an employee of any other party to the CONTRACT in any capacity or a CONSULTANT to any other party of the CONTRACT with respect to the subject matter of the CONTRACT. The cancellation shall be effective when written notice from the STATE is received by all other parties to the CONTRACT unless the notice specifies a later time.

4.12 SUCCESSORS AND ASSIGNS

The CONSULTANT and all successors, executors, administrators and assigns of CONSULTANT'S interest in the work or the compensation herein provided shall be bound to the STATE to the full legal extent to which the CONSULTANT is bound with respect to each of the terms and agreements of this CONTRACT.

4.13 CONTINUING OBLIGATION

The CONSULTANT agrees that if because of death or any other occurrence it becomes impossible for any principal or employee of the CONSULTANT to render the services required under this CONTRACT, neither the CONSULTANT nor the surviving principals shall be relieved of any obligation to render complete performance. However, in such event, the STATE may terminate this CONTRACT if it considers the death or incapacity of such principal or employee to be a loss of such magnitude as to affect the CONSULTANT'S ability to satisfactorily complete the performance of this CONTRACT.

4.14 INSURANCE

1. Without limiting any liabilities or any other obligations of the CONSULTANT, the CONSULTANT shall provide and maintain the minimum insurance coverage listed below. Coverage will be provided with forms and insurers acceptable to ADOT and maintained at a minimum until obligations under this CONTRACT are satisfied.
 - a. If applicable, Workmen's Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of its employees engaged in the performance of the services, and Employers' Liability insurance with a minimum limit of one hundred thousand dollars (\$100,000). Evidence of qualified self-insured status shall suffice for this section.
 - b. Architects' and Engineer's Professional Liability insurance in the amount of one million dollars (\$1,000,000) each claim, with said coverage to remain in force and effect for a minimum of one year past ADOT's acceptance of the CONTRACT.

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- c. Comprehensive General Liability insurance with a minimum combined single limit of one million dollars (\$1,000,000) each occurrence. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, contractors protective, products and completed operations. Said policy shall contain a severability of interest clause.
- d. Commercial Automobile Liability coverage with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) for all owned, leased, hired and non-owned vehicles. The State of Arizona and the Arizona Department of Transportation must be named as Additional Insureds and Certificate Holder on the policy.
- e. Valuable Papers insurance in an amount sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the work of the CONSULTANT used in the completion of this CONTRACT.
- f. The policy required by Sections c. and e. above shall be endorsed to include the STATE and ADOT, its agents and officials and employees as additional insureds and shall stipulate that the insurance afforded CONSULTANT shall be primary insurance and that any insurance carried by ADOT, its agents, officials or employees shall be excess and not contributory insurance to that provided by CONSULTANT.
- g. A certificate of insurance acceptable to ADOT shall be issued to ADOT prior to commencement of the CONTRACT as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificate shall contain provisions that coverage afforded under the policies will not be cancelled, terminated or materially altered until at least 30 days prior written notice has been given to ADOT.

4.15 INDEMNIFICATION - RESPONSIBILITY FOR CLAIMS AND LIABILITIES

1. For Professional Liability

To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the State of Arizona, its agents, representatives and employees from and against liability for loss or damage resulting from the negligence of the CONSULTANT, or any subconsultant, or anyone directly or indirectly employed by the CONSULTANT or any subconsultant, but only to the extent the loss or damage results from the negligence of the CONSULTANT, or any subconsultant, or anyone directly or indirectly employed by the CONSULTANT or any subconsultant.

2. For Other than Professional Liability

To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the State of Arizona, its agents, representatives and employees from and against liability for loss or damage resulting from the negligence of the CONSULTANT, or any subconsultant, or anyone directly or indirectly employed by the CONSULTANT or any subconsultant, but only to the extent the loss or damage results from the negligence of the CONSULTANT, or any subconsultant, or anyone directly or indirectly employed by the CONSULTANT or any subconsultant.

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4.16 ANTITRUST VIOLATIONS

The CONSULTANT and the STATE recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by Purchaser or ultimate user: in this case, the STATE. Therefore, CONSULTANT, acting as a Vendor, hereby assigns to the STATE any and all claims for such overcharges.

4.17 LIQUIDATED DAMAGES

(This is an optional provision applied, on an exception basis, primarily to contracts initiated and administered by the Arizona Transportation Research Center - Not applicable to this contract)

4.18 CONSULTANT'S RESPONSIBILITY

The CONSULTANT has total responsibility for the accuracy and correctness of plans and related data prepared under the terms of this CONTRACT, and shall check all such material accordingly for completeness, missing items, correct multipliers and consistency. The plans will be reviewed by ADOT for conformity with ADOT procedures and contract terms. Review by ADOT does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans.

4.19 ACCURACY OF WORK

Acceptance of the work by the STATE will not relieve the CONSULTANT of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities. The CONSULTANT shall make all necessary revisions or corrections resulting from errors and omissions on the part of the CONSULTANT without additional compensation.

4.20 CONSULTANT'S ENDORSEMENT OF PLANS, ETC.

The CONSULTANT'S seal shall be endorsed and affixed to plans, reports and engineering data furnished under this CONTRACT.

4.21 PROFESSIONAL CONDUCT

The CONSULTANT shall comply with the provisions of A.C.R.R.4-30-301 (which is the official compilation of the Administrative Rules and Regulations for the State of Arizona), entitled Rules of Professional Conduct, Rules of the State Board of Technical Registration for Architects, Assayers, Engineers, Geologists, Landscape Architects and Land Surveyors, which are incorporated herein by reference and hereby made a part of the CONTRACT.

4.22 IMPROPER EXERCISE OF AUTHORITY

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It is further understood and agreed that the CONSULTANT shall not in any way exercise any portion of the authority or powers of the State of Arizona, and shall not make a contract or commitment, or in any way represent itself as an agent of the State of Arizona beyond the scope of this CONTRACT unless expressly authorized, in writing, by the STATE.

4.23 CONFLICTS OF INTEREST

1. The CONSULTANT shall not engage the services on this CONTRACT of any present or former STATE employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modifications for this CONTRACT.
2. The CONSULTANT agrees that no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the CONTRACT.

4.24 ORGANIZATIONAL CONFLICTS OF INTEREST

1. No contract for the construction of a project shall be awarded to the firm that designed the project, or its subsidiaries, affiliates, the parent company or subconsultants, except with the written approval of the STATE.
2. The applicability of the above also applies to a Management and/or General Consultant or any of its subsidiaries, affiliates, the parent company or subconsultants that were involved in any aspect of the design process.

4.24.1 CONSULTANT - CONTRACTOR CONFLICTS OF INTEREST

The CONSULTANT agrees that it shall not perform services on this project for the contractor, sub-contractor or any supplier.

The CONSULTANT shall not negotiate, contract, or make any agreement with the contractor, subcontractor or any supplier with regard to any of the work under this project, or any services, equipment or facilities to be used on this project.

4.25 ORGANIZATION EMPLOYMENT DISCLAIMER

1. The CONTRACT is not intended to constitute, create, give to, or otherwise recognize a joint venture agreement or relationship, partnership, or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the CONTRACT.
2. The parties agree that no persons supplied by the CONSULTANT in the performance of CONSULTANT's obligations under the CONTRACT are considered to be STATE employees, and that no rights of State civil service, retirement or personnel rules accrue to such persons. The CONSULTANT shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee

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benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the STATE harmless with respect thereto.

4.26 NONPROCUREMENT DEBARMENT AND SUSPENSION

- 1. In accordance with 49 CFR 29.505, and by signature on this CONTRACT, the CONSULTANT certifies its' compliance, and the compliance of any subconsultants or subcontractors present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving Federal Funds:**
 - a) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;**
 - b) does not have a proposed debarment pending;**
 - c) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past 3 years; and**
 - d) has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years as specified by 49 CFR paragraph 29.305(a).**

Where the CONSULTANT or subconsultant is unable to certify to the statement in 4.26.1(a) above, the CONSULTANT or subconsultant will be declared ineligible to enter into CONTRACT or participate in the project.

Where the CONSULTANT is unable to certify to any of the statements as listed in 4.26.1 (b), (c) or (d), the CONSULTANT shall submit a written explanation to the STATE. The certification or explanation will be considered in connection with the STATE's determination whether to enter into CONTRACT.

- 2. The CONSULTANT shall provide immediate written notice to the Department if at any time the CONSULTANT or any subconsultants or subcontractors, present or future, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.**

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4.27 COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this CONTRACT, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the STATE shall have the right to annul this CONTRACT without liability, or in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

4.28 SUBLETTING, ASSIGNMENTS AND TRANSFERS

The CONSULTANT firm was chosen to perform the work on this CONTRACT based upon training and qualifications of its members. Therefore, subletting, assignment or transfer of any work to subconsultants and lower tier subconsultants, unless approved in writing by the STATE prior to performance of work, is expressly prohibited.

4.29 SUBCONSULTANTS

1. The CONSULTANT may retain Subconsultants on an "as required" basis, provided that the Subconsultants selected, and the rates to be paid, are identified on each Subconsultant's DERIVATION OF COST PROPOSAL located in the SCOPE OF WORK section, Appendix of the CONTRACT, or are approved by contract modification, or by Administrative Determination Letter, as applicable. All Subconsultants shall be required to follow the terms and conditions of this CONTRACT.

- a. Subconsultants' Compensation

Each Subconsultant will be expected to follow covenants set forth in 3.02 2. unless the subcontract is considered a Lump Sum by Task (fixed price) subcontract and not a Costs Plus Fixed Fee subcontract. However, with respect to 3.02 2.b(5), the Indirect Costs (Overhead) rates for each Subconsultant, when applicable, will be the actual allowable overhead rate or the Negotiated Provisional rate stipulated in each Subconsultant's final DERIVATION OF COST PROPOSAL, as concurred with by the STATE. Each Subconsultant's actual allowable overhead rate or the negotiated provisional Overhead rate is separately determined and may not be the same rate as stipulated for the CONSULTANT.

- b. CONSULTANT'S Responsibility Regarding Subconsultant's Costs

The Subconsultant's allowable costs shall be governed by 3.02 2. The CONSULTANT shall monitor the billings received from the Subconsultants and ensure that all costs are documented and supported.

Regarding Indirect Costs (Overhead), the CONSULTANT is responsible for determining that the Subconsultants comply with 3.02 2.b.(6) with respect to the actual allowable or negotiated provisional Overhead rates. The Overhead rates for Subconsultants are "actual allowable" or "negotiated provisional", and must be accounted for annually. A Subconsultant may not bill more than its actual allowable Overhead rate or the negotiated provisional Overhead rate. In the event any Subconsultant violates this subsection, the penalties set forth in 3.02 2.b.(6)(a) will be assessed to the CONSULTANT.

All costs of the Subconsultants are subject to audit unless waived by the STATE. The cost to the STATE for Subconsultants shall be in amounts equal to the actual allowable costs paid to the Subconsultants.

2. The volume of work performed by the Subconsultants shall not exceed 49% of the total contract value unless waived by the STATE.

4.30 SUBCONTRACTS

The CONSULTANT agrees to insert in all subcontracts the clauses hereof entitled "Civil Rights," "Affirmative Action," "Ownership of Documents," "Patents and Copyrights", "Anti Lobbying and Disclosure," "Retention of Records" and "Federal Immigration and Nationality Act". The CONSULTANT further agrees to insert in any subcontract exceeding \$100,000 the clause hereof entitled "Environmental Protection."

4.31 KEY PERSONNEL

Any substitution or transfer of personnel specifically identified in CONSULTANT'S proposal as assigned to the work of this CONTRACT shall be subject to prior written approval by the STATE.

4.32 EMPLOYMENT OF PERSONNEL OF PUBLIC AGENCIES

The CONSULTANT shall not engage the service of any person or persons then in the employ of the STATE for work covered by the terms of this CONTRACT without the prior written approval of the STATE.

4.33 ANTI-LOBBYING

1. The CONSULTANT agrees to comply with the provisions of Section 1352 of Title 31, U.S.Code (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits federal funds from being expended by a recipient or any lower tier sub-recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the STATE.

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2. The CONSULTANT agrees to require all subconsultants and lower tier subconsultants who have agreements exceeding \$100,000 to complete the Certification of Federal Contracts (ECS Form 90-1) and, when appropriate, the Disclosure of Lobbying Activities (ECS Form 90-3) prior to execution of the Prime Consultants Agreement with the STATE. Lower tier certifications are to be maintained by the CONSULTANT.

4.34 OWNERSHIP OF DATA

1. The CONSULTANT agrees to maintain (in sufficient detail as will properly reflect all work done and results achieved in the performance of this CONTRACT) tracings, plans, specifications and maps, basic survey notes and sketches, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work called for in the CONTRACT; all such information and documentation to be termed "Data" under this CONTRACT.
2. All Data procured hereunder for the work funded by ADOT shall become the property of ADOT and delivered to ADOT upon request, and shall not be used or released by the CONSULTANT or any other person except with the prior written approval of the STATE; provided however, that CONSULTANT shall not be required to retain any Data not requested by ADOT within five years from the date of final payment to the CONSULTANT hereunder; and provided further that until such delivery to ADOT the CONSULTANT agrees to permit representatives of ADOT and the Federal Highway Administration to examine and review at reasonable times all Data still in the possession of the CONSULTANT.
3. All services, information, computer program elements, reports and other deliverables which may be patented or copyrighted and created under this CONTRACT are the property of the State of Arizona and shall not be used or released by the CONSULTANT or any other person except with the prior written approval of the STATE.

4.35 ADOT PRODUCTS

ADOT will provide the consultant with the ADOT developed software for the sole purpose of completing this contract, as set forth in the Site License Contract (which includes a detailed list of Software that will be provided to the consultant). The software is provided to the consultant solely for the purpose of completing this contract and for no other purposes. ADOT developed software including: manuals, electronic information, programs, and associated materials, remains the property of ADOT. Any use of this software for purposes other than the fulfillment of this contract is strictly prohibited. The consultant shall not copy the software or provide, distribute or demonstrate the software to other entities. Upon completion of the contract or when otherwise notified by ADOT, the contractor will return all software, backup copies, manuals, electronic information and associated materials to ADOT.

4.36 RETENTION OF RECORDS

1. The CONSULTANT and any subconsultant/subcontractor/vendor shall keep and maintain all books, papers, records, accounting records, files, accounts, reports, costs proposals with backup data and all other material relating to the CONTRACT and related project(s), and shall make all such material available at any reasonable time during the term of work on the CONTRACT and related project(s) and for five (5) years from the date of final payment to the CONSULTANT for auditing, inspection and copying upon the STATE'S request, or at the request of the Federal Highway Administration or any other authorized representative of the Federal Government.
2. The CONSULTANT shall insert in each of its subcontracts the above requirement and also a clause requiring its subconsultants to include the above requirement in any lower-tier subcontracts or purchase orders.

4.37 REVIEW AND INSPECTION

Representatives of the STATE and the Federal Highway Administration are authorized to review and inspect the CONTRACT activities and facilities during normal business hours.

4.38 PROPERTY OR EQUIPMENT

Except as otherwise provided in this CONTRACT, computer or other special equipment needed to fulfill this CONTRACT, will be purchased through the ADOT Procurement Group and considered ADOT property. The control, utilization and disposition of property or equipment acquired using FEDERAL/STATE funds shall be determined in accordance with the property management standards set forth in 49 CFR Part 18, and ADOT Policy – FIN-11.02 and must follow the Fixed Assets procedures in both property identification and inventory control processes.

4.39 CIVIL RIGHTS

1. The CONSULTANT is required to comply with Executive Order 75-5, "Non-discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this CONTRACT.
2. The CONSULTANT is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23, CFR 710.405 (b) are made applicable by reference and are hereinafter considered a part of this CONTRACT.
3. The CONSULTANT is required to comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41-CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this CONTRACT.

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4. The CONSULTANT shall post in conspicuous places available to employees and applicants for employment, the following notice:

It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to insure and maintain a working environment free of harassment, intimidation and coercion.

4.40 AFFIRMATIVE ACTION

CONSULTANT shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this CONTRACT:

1. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
2. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
4. Where the requirement permits, establishing delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.
5. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

4.41 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

The CONSULTANT is required to adhere to the commitment made to participation by ADOT certified Disadvantaged Business Enterprises (DBE) as indicated in the firms Technical Proposal or subsequently agreed to by the STATE during negotiations. The STATE, at its discretion on a case by case basis, may waive the above limitations.

The CONSULTANT must submit the DBE Compliance Report to the Civil Rights Office by the 3rd Friday of each month. The report shall indicate the amount earned by and paid to each DBE working on the project for the preceding month.

4.42 ENVIRONMENTAL PROTECTION

(This clause is applicable if this contract exceeds \$100,000.00. It applies to Federal Aid Contracts Only.)

Contract No.:

CONSULTANT is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Federal Highway Administration and to the U.S.E.P.A. Assistant Administrator for Enforcement. (EN-329).

4.43 ENERGY CONSERVATION

(This clause is applicable to Federal Aid Contracts Only.)

CONSULTANT is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy Conservation Act (P.L. 94-163).

4.44 PUBLICATION PROVISIONS

The CONSULTANT shall provide annual, quarterly or monthly written progress reports requested by the STATE. Prior to completion of the CONTRACT and related project(s), the CONSULTANT shall prepare a final report summarizing activities, conclusions, and recommendations in a form as prescribed by the STATE, and this report shall be a prerequisite for final payment. Publication rights to all reports are reserved by the STATE. The CONSULTANT shall not release information developed under the CONTRACT prior to publication, except upon written approval of the STATE.

4.45 PUBLICATION PROVISIONS (RESEARCH AND UNIVERSITIES)

(Not applicable to this contract)

4.46 PATENTS AND COPYRIGHTS

All services, information, computer program elements, reports and other deliverables which may be patented or copyrighted and created under this CONTRACT are the property of the State of Arizona and shall not be used or released by the CONSULTANT or any other person except with the prior written approval of the STATE.

4.47 PATENTS AND COPYRIGHTS (RESEARCH AND UNIVERSITIES)

(Not applicable to this contract)

4.48 FEDERAL IMMIGRATION AND NATIONALITY ACT:

(A) General:

The Consultant, including all Subconsultants, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the contract during the duration of the contract. The State shall retain the right to perform random audits of Consultant and Subconsultant and Subconsultant records or to inspect papers of any employee thereof to ensure compliance.

The Consultant shall include the provisions of Section 4.48 in all its subcontracts.

Contract No.:

In addition, the Consultant shall require that all Subconsultants comply with the provisions of Section 4.48, monitor such Subconsultant compliance, and assist the Department in any compliance verification regarding any Subconsultant.

(B) Compliance Requirements for A.R.S. § 41-4401, Government Procurement, E-Verify Requirement; Sanctions:

By submission of a bid, the Consultant warrants that the Consultant and all proposed Subconsultants are and shall remain in compliance with:

- (1) All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the contract, and
- (2) A.R.S. Section 23-214, Subsection A (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.").

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Consultant and Subconsultants are subject to sanctions specified in Section 4.48.

Failure to comply with a State audit process to randomly verify the employment records of Consultant and Subconsultant shall be deemed a material breach of the contract, and the Consultant and Subconsultants are subject to sanctions specified in Section 4.48.

(C) Compliance Verification:

The State may, at its sole discretion, require evidence of compliance from the Consultant or Subconsultant.

Should the State request evidence of compliance, the Consultant or shall complete and return the State Consultant Employment Record Verification Form and Employee Verification Worksheet, provided by the Department, no later than 21 days from receipt of the request for such information.

Listing of the compliance verification procedure specified above does not preclude the Department from utilizing other means to determine compliance.

The State retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Consultant or Subconsultant is complying with the warranty specified in Section 4.48.

(D) Sanctions for Non-Compliance:

For purposes of this paragraph, non-compliance refers to either the Consultant's or Subconsultant's failure to follow immigration laws or to the Consultant's failure to provide records when requested. Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. At a minimum, the Department will reduce the Consultant's compensation by \$10,000 for the initial instance of non-compliance by the Consultant or a Subconsultant. If the same Consultant or Subconsultant is in non-compliance within two years from the initial non-compliance, the Consultant's compensation will be reduced by a minimum of \$50,000 for each instance of non-compliance. The third instance by the same Consultant or Subconsultant within a two-year period may result, in addition to the minimum \$50,000 reduction in compensation, in removal of the offending Consultant or Subconsultant, suspension of work in whole or in part or, in the case of a third violation by the Consultant, termination of the contract for default.

In addition, the Department may debar a Consultant or Subconsultant who is in non-compliance three times within a two-year period for up to one year. For purposes of considering debarment: (1) non-compliance by a Subconsultant does not count as a violation by the Consultant, and (2) the Department will count instances of non-compliance on other Department contracts.

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The sanctions described herein are the minimum sanctions; in case of major violations the Department reserves the right to impose any sanctions up to and including termination and debarment, regardless of the number of instances of non-compliance.

Any delay resulting from a compliance verification or a sanction under this subsection is a non-excusable delay. The Consultant is not entitled to any compensation or extension of time for any delays or additional costs resulting from a compliance verification or a sanction under Section 4.48.

An example of the minimum sanctions under this subsection is presented in the following table:

Offense by:			Minimum
Consultant	Subconsultant A	Subconsultant B	Reduction in Compensation
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000 *
* May, in addition, result in removal and debarment of the Subconsultant.			

In Witness whereof the parties hereto have executed this agreement as of the day and year first herein written.

FOR THE STATE

ARIZONA DEPARTMENT OF TRANSPORTATION

Date By: _____

Title

FOR THE CONSULTANT

FIRM NAME

Date By: _____

Title